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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/796,305 02/07/97 KILIBWA

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IM22/1101

EXAMINER

TRAN LIEN, T

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/01/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademark

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Office Action Summary

Application No.

08/796,305

Applicant(s)

Kilibwa

Examiner

Lien Tran

Group Art Unit

1761



☒ Responsive to communication(s) filed on Aug 12, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 30-63 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 30-63 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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1. Claims 30,39,48 and 56 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In each of the above claims, applicant amended the claims to put in the limitation that the polydextrose is added “ in an amount effective to reduce staling without causing undue dough stickiness” ; this limitation is not fully supported by the specification. The disclosure discusses about reducing staling, but there is no discussion on causing undue dough stickiness. Page 7 discloses too much polydextrose results in a sticky dough, but there is nothing disclosed about undue dough stickiness. What would be considered as undue dough stickiness?

2. Claims 30,39,48 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In all these claims, the phrase “ undue dough stickiness “ is indefinite because the scope of the claims can not be determined. What would be considered as undue stickiness? The specification does not define the degree of stickiness which would be considered as undue.

3. The new 112 rejections are necessitated by amendment.

4. The 112 first paragraph rejection of claims 39-47 and 56-63 is maintained for the same reason set forth in paragraph 1 of the previous office action.

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5. Claims 30-31,36,48-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Dartey et al for the same reason set forth in paragraph 3 of the previous office action.
6. Claims 30-32,34,39-41,43,48-49,51-52, are 56-59 rejected under 35 U.S.C. 102(b) as being anticipated by Engelbrecht et al for the same reason set forth in paragraph 4 of the previous office action.
7. Claims 37-38,54-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dartey et al in view of the textbook “ The Encyclopedia of Chemical Technology “ for the same reason set forth in paragraph 5 of the previous office action.
8. Claims 33,35,37-38,42,45-47,53-55 and 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelbrech et al in view of the textbook “ Encyclopedia of Chemical Technology” for the same reason set forth in paragraph 6 of the previous office action.
9. Claims 44 and 60 are allowable over the prior art for the same reason set forth in paragraph 7 of the previous office.
10. In the response filed August 12, 1999, applicant traverses the 112 first paragraph rejection, applicant argues although the specification only exemplifies the use of yeast as a leavening agent in bread products, the specification does state the present invention can be used with commonly used dough preparation processes and other leavening agents such as baking powder are exemplified for use in other baked products. The discussion about the present invention being used with commonly used dough preparation does not relate to the use of yeast or other leavening agents. The point is claims 39 and 56 are directed specifically to bread product

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and not any baked product and the only leavening agent disclosed for bread product is yeast.

While other leavening agent is disclosed, it is disclosed for product other than bread. For example, page 17 discloses baking powder but it is present in a muffin not bread.

With respect to the 102 rejection over Dartey, applicant argues none of the prior art cited teaches the use of water-soluble polydextrose in baked products in the amount claimed and the property of reducing staling. This argument is not persuasive because as shown in the rejection the amount of polydextrose disclosed by Dartey can fall within the claimed range and since the same material is used, the anti-staling property is inherent. To this applicant argues that the disclosure of a range endpoint with no specific exemplification of embodiments with polydextrose amounts near the lower end of the range does not amount to the sufficient specificity required for anticipation. The examiner respectfully disagrees. As long as the broad generic teaching of the reference discloses an amount which falls within the range claimed, then the reference anticipates the claims. It is not needed that the amount has to be specifically exemplified in the examples. Applicant further argues that a composition with a high flour content and a low polydextrose content would not achieve the desired level of caloric reduction according to Dartey. This argument is not persuasive. Since Dartey teaches the broad ranges of ingredient, the selection of any amount within the ranges taught is within the teaching of Dartey. Applicant also argues the amounts of flour and polydextrose selected to meet the claims do not total 100wt%; the amounts do not have to total 100wt%. There is no requirement that all the amounts have to add up to 100 wt %. Dartey does not disclose that all the amounts have to add up to be 100 wt %. Applicant

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also points out that the examples in Dartey disclose much higher amounts of polydextrose. The examples are only certain embodiments of the reference and it is not the whole teaching of the reference. As long as the broad range disclosed fall within the range claimed, then the reference meets the claimed limitation.

With respect to the Engelbrecht et reference, applicant argues the passing reference in Engelbrech to the use of polydextrose as a fiber material without specific exemplification does not render the present claims unpatentable. This argument is not persuasive. Engelbrecht et al specifically disclose polydextrose; thus, the reference meets the claimed limitation. The examiner is not aware of any requirement that a patent has to have examples of all the materials that it discloses. As long as the material is disclosed, it meets the claimed limitation; the specific material does not have to be recited in examples to meet the claimed limitation. Applicant further argues nowhere in Engelbrecht is the specific use of water-soluble polydextrose exemplified or even disclosed. Again the material disclosed does not have to be in the examples; as to the use of polydextrose being disclosed, this is clearly stated on column 3 lines 55-58. The property of anti-staling is inherent in the Engelbrecht product because the same material is used and the amount falls within the range claimed.

11. Applicant's arguments filed August 12, 1999 have been fully considered but they are not persuasive.

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Tuesday, Thursday 9:30-2:30 and Friday 6:30-5:00. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

October 29, 1999


LIEN TRAN
PRIMARY EXAMINER
Group 1700